HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no. 1954 of 2005 (SS)

Gurjeet Singh s/o Late Sri Yogendra Singh
R/o village Dibhibia, Post Bilaspur,
District Rampur ..... Petitioner

Versus

1. State of Uttaranchal
2. Additional Transport Commissioner
3. Assistant Regional Transport Officer
   Udham Singh Nagar ..... Respondents

Sri S.S. Chauhan, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 22.12.2005

Hon'ble Rajesh Tandon J.

Heard Sri S.S. Chauhan, Advocate for the petitioner and the Standing Counsel for the respondents. Both the parties have agreed that the writ petition be disposed of at the admission stage.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the suspension order dated 7.12.2005, annexure-4 to the writ petition.

Briefly stated according to the case of the petitioner he was appointed as a Junior Clerk in the office of Assistant Regional Transport officer, Udham Singh Nagar vide order dated 13.9.2005 under the scheme for giving employment to the persons who had participated in Uttarakhand movement. The petitioner has submitted that there was dispute between the

petitioner and Sri R.D. Joshi, Inchare Inspector, Police Station Kotwali, Rudrapur who was continuously threatening the petitioner that he will encounter the petitioner. The petitioner made complaint to the Senior Superintendent of Police, Udham Singh Nagar Against the illegal activities of Sri R.D. Joshi. On 3.12.2005 the Police raided the office of the Assistant Regional Transport Officer, Udham Singh Nagar and found that the petitioner was having a revolver, two gunner and a flag of a political party on the personal vehicle of the petitioner. The petitioner filed his reply. On 7.12.2005 the Additional Transport Commissioner, Uttaranchal, Dehradun passed the order suspending the petitioner. The suspension order shows that disciplinary proceedings are contemplated, which has been challenged by way of the present writ petition.

The petitioner has placed reliance on the case S.K. Goel vs. State of Uttaranchal and another , 2005 (2) U.D. 11, wherein a Division Bench of this Court has held as under:

"It is not necessary to place a Government employee under suspension in every case where disciplinary proceedings are contemplated. The continuance of the employee in the same post or at the same station may be considered likely to influence or prejudice the enquiry and the disciplinary proceedings. Sometimes, in view of the nature of the post held by the officer and the nature of the irregularities alleged, the very continuance of the officer in service during the disciplinary proceedings may be considered undesirable. In the first case, the proper conduct of enquiry and disciplinary proceedings can be ensured by a mere transfer of he officer. Only in the second case the officer need be placed under suspension. Hence, it is incumbent upon the disciplinary

authority to consider whether a transfer of the officer will be sufficient or whether suspension itself is required. Only when the disciplinary authority is satisfied that suspension itself is required, an officer can be placed under suspension. If and when the suspension is questioned in a court of law, the disciplinary authority is bound to show that he had arrived at a satisfaction that a mere transfer was not sufficient and that suspension itself was required. If the disciplinary authority fails to show that he had properly considered the matter and was satisfied that suspension itself was required, the order of suspension is liable to be declared illegal and arbitrary and quashed on that basis. It should be remembered that though suspension is not a punishment, it visits that employee with serious civil consequences and loss of reputation and prestige. Hence, an order of suspension should not be passed lightly, casually or without proper application of mind."

A perusal of the order impugned shows that the disciplinary proceedings are being contemplated however, no enquiry is pending against the petitioner at present. Rule 4 of U.P. Government servant (Punishment and Appeal) Rules 1999 provides as under:

Suspension-(1) *A Government servant, against whose conduct an inquiry is contemplated, or proceedings, may be placed under suspension, pending the conclusion of the inquiry in the discretion of the Appointing Authority:*

Provided that suspension should not be restored to unless the allegations against the Government servant are so serious that in the event of their being established may ordinary warrant major penalty.

Since suspension order ahs been passed on 7.12.2005 stating therein that the disciplinary proceedings are to be initiated. From the order itself it does not appear that any enquiry officer has been appointed. The disciplinary authority is therefore, directed to finalise the enquiry at the earliest. During pendency of the enquiry suspension order shall remain in abeyance. However, it will be open for the respondents to reconsider or review the order in the light of the judgment of the Division Bench, S.K. Goel vs. State (Supra).

Accordingly, the writ petition is disposed of. No order as to costs.

22.12.2005 (**Rajesh Tandon J.)**

*Dhyani